

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY E. GEBHARD

Appeal 2008-0892
Application 09/328,749
Technology Center 3700

Mailed: July 24, 2008

Before DALE M. SHAW, *Chief Appeals Administrator*
SHAW, *Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

FINDINGS OF FACT

On February 14, 2006, the Examiner mailed a Non-Final Office Action, rejecting claims 1-4, 6-21, and 23-26. The grounds of rejection in the Non-Final Rejection are:

Claims 1, 6, 8-13, 15, 17, 20-21, 24 and 26 are rejected under 35 U.S.C. § 102(b), as being anticipated by Anderie (US 4,922,631).

Claims 23 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderie... in view of Nagano (US 5,446,977).

Claims 2-4, 11-14, 16, and 19 are rejected under 35 U.S.C. § 103(a) as being obvious over Anderie.

Claims 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderie... in view of Eisenbach et al. (US 4,815,222).

On October 18, 2006, the Appellant filed an Appeal Brief, which states:

This appeal involves claims 1-4, 7-21, and 23-26.
Claims 5 and 22 have been cancelled. Claim 6 is not being
appealed [footnote omitted].
App. Br. 4.

At no time does the Appellant argue the rejection of claim 6 in the Appeal Brief.

On January 18, 2007, the Examiner mailed an Examiner's Answer, responding to the rejection of claims 1-4, 6-21, and 23-26 under 35 U.S.C. § 102(b) and § 103(a) as being anticipated by Anderie, in view of Nagano and Eisenbach.

DISCUSSION

The Board of Patent Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 6, Sept 2007),

Accordingly, it is

ORDERED that the application is remanded to the Examiner to enter a paper canceling claim 6.

Upon entry of the paper, the application should be returned to the Board for the consideration of claims 1-4, 7-21, and 23-26.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/ewh

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